DETAILED ACTION

This Action is in response to the amendment filed 11/3/2010. Claims 1, 2, 5, 7, 12, 15, and 18 have been amended and no claims have been added or cancelled. Thus, claims 1-21 are currently pending in the instant application.

Response to Arguments

Applicant's arguments with respect to the Fujisato and Jaworski references have been considered but are moot in view of the new ground(s) of rejection.

Allowable Subject Matter

Claims 6-10, 16 would be allowable if rewritten to include all of the limitations of the base claim and any intervening claims.

Claims 12-20 are allowed over the prior art of record.

Claim Objections

Claim 2 is objected to because of the following informalities: it appears that the word "located" should be added before "Externally" to complete the sentence. Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 4, 11, and 21 are rejected under 35 U.S.C. 102(e) as being anticipated by Okayama et al. (US 5,143,295, herein referred to as "Okayama").

Regarding claims 1, 2, and 21, Okayama discloses a massage nozzle comprising: a vortex chamber (8) having a water intake section (1a) provided to for a vortical flow therein (see Figure 19 for example) therein and a spouting port (3a or the end of the housing member 6 for example) provided to spout the vertical flow to form a negative pressure region (see abstract); a guide section (the side walls of housing 6 or 2d) having a semi-cylindrical shape and located externally with respect to the spouting port (see Figures 19 and 20); and a water spray plate (2) provided at a distal end of the guide section and/or spouting port (see Figure 19), the water-spray plate having an opening (15) at a center thereof and a plurality of water-spray holes (13) around the opening, wherein vortical flow reaching the spray plate is spouted forward from the holes (see Figure 11). Okayama further discloses a water supply means (that enters at supply pipe 50) for supplying water to the vortex chamber fully capable of allowing a user to perform a suction massage (see abstract).

Regarding claim 4, the piece (2d) can be considered a baffle plate at a plane of the water spray plate opposite to the spouting port (i.e., the piece 2d is distal while the port is proximal to the spray plate 2). Note that there is nothing in the claim structurally defining the baffle plate or its intended use, therefore it appears that any "plate" could be considered a baffle plate so long as it was provided at a plane of the spray plate opposite the spouting port. Here, the L shape of the

piece 2d reads on the baffle plate. Likewise the baffles (18) can be considered the baffle plate as well.

Regarding claim 11, Okayama discloses a circumferential protrusion (15c) protruding from the circumference of the opening of the plate to the vortex chamber (see Figure 19).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 3 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Okayama.

Regarding claim 3, as seen in Figures 11 and 19, the opening (15) appears to be about the same size as the spouting port (3a) and thus Okayama lacks the opening being larger. However, absent a critical teaching and/or showing of unexpected results from the opening being larger than the spouting port, examiner contends that such a change in a dimension is an obvious design consideration to one of ordinary skill in the art in order to provide a larger suction force for example depending on a desired flow/bubble pattern. A mere change in dimension without a change in function does not patentably distinguish an invention over the prior art.

Regarding claim 5, Okayama is silent as to the length of the guide section. However, absent a critical teaching and/or showing of unexpected results from such a dimension, examiner contends that the exact length of the guide section is an obvious design consideration to one of

ordinary skill in the art. The dimension of the guide section with respect to the diameter openings and angles would contribute to the water suction force and pressure for example, which would be based on user preferences and what is considered a "safe" suction force use near humans. Furthermore, a mere change in dimension without a change in function does not patentably distinguish an invention over the prior art.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Wei, Lemons, Jacob et al., and Reuter are cited to show other vortex chambers with plates having holes for spouting water forward. Ko is cited to show another massaging nozzle with a spray plate having an opening for discharging water and a plurality of holes surrounding the opening.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to KRISTEN C. MATTER whose telephone number is (571)272-5270. The examiner can normally be reached on Monday - Friday 9-4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on (571) 272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Steven O. Douglas/
Primary Examiner, Art Unit 3771

/Kristen C. Matter/
Examiner, Art Unit 3771